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5 IN THE UNITED STATES DISTRICT COURT  
6 FOR THE NORTHERN DISTRICT OF CALIFORNIA

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8 NETWORK APPLIANCE, INC.,  
9 Plaintiff,

No. C-07-06053 EDL

10 v.

11 SUN MICROSYSTEMS INC.,  
12 Defendant.

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14 **ORDER REGARDING SEALING OF  
15 PORTIONS OF NOVEMBER 5, 2009  
16 JOINT LETTER BRIEF AND RELATED  
17 DOCUMENTS**

18 On November 5, 2009, the parties submitted a joint letter brief regarding a discovery dispute  
19 over the consequences of an internal email produced by Sun in August 2009 as document  
20 SUN05523442. Sun initially requested that the original joint letter brief be filed under seal on the  
21 basis that it referenced and described the contents of a document and a deposition transcript that Sun  
22 previously designated “highly confidential” on the basis that they “would cause competitive harm to  
23 Sun’s business operations or provide an improper advantage to others,” without further explanation.  
24 NetApp opposed the request to seal, arguing that Sun’s own designation of the underlying document  
25 as “highly confidential” is insufficient to justify sealing, that Sun’s justification for sealing is  
26 boilerplate, and that Sun has not made a particularized showing of good cause to warrant protection.  
27 Thereafter, Sun was given an opportunity to respond to NetApp’s Objection and filed additional  
28 briefing. Having considered all of the briefing and related documents on this matter, the Court finds  
that Sun has not made a sufficient showing of good cause to justify sealing the November 5, 2009  
joint letter brief, portions of NetApp’s Opposition to Sun’s request to seal portions of the letter and  
portions of the Beebe Declaration in support thereof, and portions of Sun’s Response to NetApp’s  
Opposition and portions of the Williamson Declaration filed in support thereof.

1 Sun bears the burden of showing specific that prejudice or harm will result if no protective  
2 order is granted. See Phillips ex rel. Estates of Byrd v. General Motors Corp., 307 F.3d 1206, 1210 -  
3 1211 (9th Cir. 2002). If the Court finds particularized harm will result from disclosure of  
4 information to the public, then it balances the public and private interests to decide whether a  
5 protective order is necessary. Id. (citing Glenmede Trust Co. v. Thompson, 56 F.3d 476, 483 (3d  
6 Cir. 1995)).

7 Sun's request does not meet the requirement of Local Rule 79-5 that the document, or  
8 portions thereof, "is privileged or protectable as a trade secret or otherwise entitled to protection  
9 under the law . . . A stipulation, or a blanket protective order that allows a party to designate  
10 documents as sealable, will not suffice to allow the filing of documents under seal." Sun relies  
11 solely on the standard in the Protective Order in place between the parties which allows documents  
12 to be designated "Highly Confidential" if they have "not been made public, the disclosure of which .  
13 . . could cause harm to the business operations of the disclosing party or provide improper advantage  
14 to others," such as trade secrets. Sun argues that the email was intentionally sent to only one person,  
15 and therefore has not been made public within or outside of Sun (see Wong Decl. ¶3), but this alone  
16 does not make it privileged or protectable. Sun also argues that it will be harmed by disclosure of  
17 the information contained in the email and its disclosure will provide an improper advantage to  
18 others because current and potential customers, as well as Sun employees, could take certain  
19 statements in the email out of context and make business decisions adverse to Sun based on these  
20 incorrect beliefs. Sun further contends that protection is warranted because NetApp has stated that it  
21 will share the document with NetApp personnel managing the litigation and customers or other third  
22 parties who enquire about the merits of the litigation if it is not sealed. Finally, according to Sun,  
23 the email relates to NetApp's '715 patent, which this Court already invalidated, and is irrelevant to  
24 the current patents-in suit. None of these arguments, either taken alone or together, amount to the  
25 "particularized showing" of harm required for sealing. The underlying email does not reveal  
26 confidential or trade secret information, and Sun's concern that portions of the email might be taken  
27 out of context by the public and internal staff is insufficient to outweigh the public's strong interest  
28 in open courts, particularly since Sun is free to compete in the marketplace of ideas by countering

1 with its own interpretation of the statements in context and to point out any lack of relevance.

2 Sun also argues that NetApp has used the same “boilerplate language” to justify sealing of  
3 documents, without a particularized showing of harm. The Court rejects Sun’s “two wrongs make a  
4 right” argument. However, both parties are reminded that boilerplate language, without a  
5 particularized showing of harm, does not meet the Court’s standard for sealing and will not suffice  
6 going forward.

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**IT IS SO ORDERED.**

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Dated: November 30, 2009

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*Elizabeth D. Laporte*

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ELIZABETH D. LAPORTE

United States Magistrate Judge